THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 20660 of 1996

Date 13.04.2005

Between:

E.Mallaiah, S/o Lakshmi,
R/o Srisailam.

..... PETITIONER

AND

The Executive Officer, Sri Bhramarambika Mallikarjuna Swamy Devasthanam, Srisailam, Kurnool Dist.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 20660 of 1996

O R D E R:

The proceedings of the first respondent dated 11.09.1996, whereby the petitioner was imposed the punishment of stoppage of 5 annual increments with cumulative effect and the period of suspension undergone by him was treated as leave, is impugned in this writ petition.

The facts to the extent necessary are that the petitioner joined as Water Supply Watchman in the Water Supply Division of Srisailam Devasthanam in the year 1980. He was promoted as Water Pump Driver in the year 1990, which post was subsequently re-designated as Pump Operator. He was issued

proceedings dated 22.12.1993, placing him under suspension for certain acts of misconduct, which included, abusing officers and other employees of the Devasthanam, damaging the temple property, trespassing into Executive Officer's residence etc. The petitioner submitted his explanation on 30.01.1994, pursuant to which, petitioner's suspension was revoked. A Criminal Complaint was filed against the petitioner under Sections 448, 427 and 353 of I.P.C. in C.C.No.42 of 1994 on the file of the Munsif Magistrate, Athmakuru. The petitioner was acquitted of all charges in C.C.No.42 of 1994 by the judgment dated 13.01.1995. The petitioner was issued a charge sheet on 23.12.1995 for the alleged misconduct, which took place on 21.12.1993. An Enquiry Officer was appointed on 13.04.1996, enquiry was conducted on 25.04.1996, and the report submitted on 11.05.1996. On 31.05.1996, the petitioner was asked to show-cause as to why he should not be inflicted the punishment of stoppage of 5 annual increments with cumulative effect since the charges framed against him had been proved in the enquiry. The disciplinary authority, in proceedings dated 11.09.1996, held that the explanation submitted by the petitioner was not convincing and since he had admitted his guilt in the enquiry, the petitioner deserved imposition of the punishment proposed in the show cause notice and accordingly punishment of stoppage of 5 annual increments with cumulative effect, was imposed on him.

Sri S.V.Bhatt, learned counsel for the petitioner, would submit that the findings of the disciplinary authority, in the impugned order dated 11.09.1996, to the effect that the petitioner had admitted his guilt is perverse and is based on no evidence. Learned counsel, after referring in detail to the enquiry report and the explanation submitted by the petitioner on 18.06.1996 in reply to the show cause notice dated 31.05.1996, would submit that the petitioner had never admitted having abused or damaged the property and had merely stated that he had met the Deputy Executive Engineer and the Executive Officer concerned. Learned counsel would submit that since the punishment imposed is a major punishment, imposition of such a punishment has to be preceded by a duly constituted enquiry, wherein the petitioner ought to have been given a reasonable opportunity of defending himself, for being furnished the statements on which the charges are sought to be proved and in permitting him to cross-examine such witnesses. Learned counsel would submit that while the alleged incident relates to 21.12.1993, the Enquiry Officer had relied on the statements

of witnesses given on the next date 22.12.1993, whereas the enquiry was conducted on 25.04.1996, more than 2½ years thereafter.

The charges levelled against the petitioner are as under:

Charge No.1: Being a public servant in a drunken stage
violated the provision of Endowment Act of 30/87 Sec. 23
code of conduct.

Charge No.2: Illegally trespassed into E.O's Quarter No.32A
and damaged building property such as pictures.

Charge No.3: He abused the authorities and co-employees
in a filthy language defamed the reputation of the
Institution.

Charge No.4: He absconded from duty and left Head
quarters without prior permission of the competent authority.

Charge No.5: He also illegally trespassed into Deputy
Executive Engineer (Ele) Qr.No.33 and used filthy language.

While it is no doubt true that the charges are serious in nature, it is settled law that the burden of proving the charges alleged against an employee, lies on the employer, that too in a properly constituted domestic enquiry after giving the delinquent employee reasonable opportunity of defending himself. Though an enquiry was held on 25.04.1996, except recording the statements of the petitioner, none of those witnesses, who had submitted statements earlier on 22.12.1993, were permitted to be cross-examined by the charge sheeted employee and solely on the basis of these statements, recorded on 22.12.1993, the Enquiry Officer held that the charges levelled against the petitioner had been established. Though the Enquiry Officer's function is limited only to conduct enquiry proceedings and in recording his findings on the evidence available on record, curiously the Enquiry Officer has chosen to impose punishment of dismissal from service on the petitioner. Be that as it may, in his reply to the show cause notice submitted on 18.06.1996, the petitioner had

categorically stated that the punishment sought to be imposed on him was without conducting any enquiry. It is also stated therein that the written complaints of office staff members, wherein the petitioner is stated to have consumed alcohol and mis-behaved in the office, had not been proved and in the absence of charges being proved, he could not be imposed stoppage of 5 annual increments.

In **State of Mysore v. Shivabasappa Shivappa,** the Supreme Court held thus:

> "……..For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."
>
> "……. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

In the case on hand, the statements given by the witnesses immediately after the alleged incident, on 22.12.1993, were relied on by the Enquiry Officer

without their being subjected to cross-examination by the delinquent employee. The Enquiry proceedings and the consequent order of punishment dated 11.09.1996 are vitiated for violation of principles of natural justice and are accordingly set aside. It is, however, made clear that this order shall not preclude the respondents from proceeding with the enquiry, comply with the rules of natural justice by providing an opportunity to the delinquent employee to cross-examine the witnesses whose statements were recorded on 22.12.1993, and on receipt of a copy of the enquiry report and after giving an opportunity to the delinquent employee to submit his representation on the findings of the Enquiry Officer, to take necessary action in accordance with law.

The writ petition is accordingly disposed of. No order as to costs.

_____

13.09.2005

usd